

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3403 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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MAHENDRABHAI NATHABHAI PATEL

Versus

JOINT SECRETARY

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Appearance:

MR YN OZA for Petitioner

MR RJ OZA for Respondent No. 1

GOVERNMENT PLEADER for Respondent No. 2, 3

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 08/07/1999

#### ORAL JUDGEMENT

In this petition under Article 226 of the Constitution the petitioner who was at the relevant time working as Taluka Development Officer in Class-II service, has challenged the order dated 15.4.1991 suspending the petitioner from service on the ground that the petitioner was involved in a corruption case for which an FIR was lodged against the petitioner and other

s at the Anti-Corruption Bureau Police Station bearing No.591-447 on 19.3.1991 for the offences punishable under the Prevention of Corruption Act. While issuing the notice ad interim relief was granted staying the order of suspension. The petition was admitted on 16.8.1991 and was fixed for final hearing on 6.9.1991. For whatever reasons, the matter has not been heard so far. On a note filed by the learned counsel for the petitioner, the petition was fixed for final hearing on the admission board of 6-5-1999 as per the order dated 22.4.1994. On that date, the matter was adjourned to 28.6.1999. Thereafter at the request of the learned counsel for the petitioner, the matter was adjourned to 6.7.1999 and again the matter has come up for hearing today. A request is made on behalf of the learned counsel for the petitioner to adjourn the hearing of the matter for two weeks. The request is rejected.

2 As mentioned in the FIR the case against the petitioner is that one D.S.Patel working as Talati-cum-Mantri had filed the FIR before the Anti-Corruption Bureau on 27.2.1991 that S.D.Vaghela, the then in-charge District Development Officer, District Panchayat and the petitioner who was then working as Taluka Development Officer, Chanasma, had demanded Rs.1500 for his transfer. It was the specific case of the complainant that earlier he paid Rs.500 to the then in-charge District Development Officer and that the petitioner herein had called the complainant for paying balance amount of Rs.1,000 on the next date to the in-charge District Development Officer. Thereafter the petitioner was transferred from Chanasma to Amreli by the order dated 1.4.1991 at Annexure-B and by the impugned order dated 15.4.1991 at Annexure-C the petitioner came to be suspended on the ground that the petitioner was prima facie involved in a corruption case as the raid was carried out by the Anti-Corruption Bureau on 19.3.1991 and the petitioner and the then in-charge DDO had taken bribe of Rs.1,000 with the complicity of each other.

3 In the present petition the order of suspension is challenged on the ground that even as per the allegation contained in the FIR, the petitioner had not demanded money for himself but the complainant had given the money for handing it over to S.D.Vaghela, in-charge DDO, but the petitioner never knew that the said amount was a bribe and that petitioner's mere presence when the bribe was taken by Dy.DDO (in charge DDO) and acceptance of that amount by the petitioner for giving it to his superior officer cannot be a case for dismissal from service. The petitioner has further contended that since

the petitioner was already transferred to Amreli from Chanasma on 1.4.1991 both the transfer and suspension orders could not have been passed.

4 A bare perusal of the FIR at Annexure-A and the impugned order of suspension at Annexure-C will leave no room for doubt that if the charge levelled against the petitioner is proved, it would be a serious misconduct entailing ultimately major penalty of dismissal from service. In this view of the matter, it would not be possible to continue the employee in public interest. The Court is not to appreciate the evidence in such matters since when the order of suspension is passed, further investigation/inquiry is yet to be carried out.

As regards the contention that both the suspension and transfer cannot be resorted to, the contention must be rejected. As per decision of the Division Bench of this Court in 27(1) GLR 41 in cases where prima facie case of corruption is made out, it would not be in public interest to continue the employee in public service and at the same time it would also not be in public interest to continue the headquarters of the employee during the suspension at the place at which or near which the misconduct was committed. Hence, in the facts and circumstances of the case, the decision of the State Government suspending the petitioner from service and fixing his headquarters at Amreli cannot be said to be illegal or arbitrary.

5 The petition, therefore, deserves to be dismissed and is dismissed. Interim relief granted earlier stands vacated. Rule is discharged.

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(mohd)